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**JUN 08 2006**

**OFFICE OF PETITIONS**

In re Application of	:	
KEITH WOOD, et al	:	
Application No. 09/813,279	:	DECISION ON APPLICATION
Filed: March 19, 2001	:	FOR
Atty Docket No. 10743/6	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "Application for Correction of Patent Term Adjustment under 37 CFR 1.705(b)" filed April 4, 2005 requesting that the Office reconsider the determination of Patent Term Adjustment (PTA) that accompanied the Notice of Allowance. Applicant requests that the initial determination of the patent term adjustment in this application be corrected from zero (0) days to forty-three (43) days.

The request for patent term adjustment is **DISMISSED**.

For the reasons stated herein, the Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **zero (0)** days, including five-hundred and ten (**510**) days of applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

**Background**

On January 10, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was zero (0) days.

In response, applicant timely filed the instant request for reconsideration of the patent term adjustment along with payment of the fee set forth in 37 CFR 1.18(e). Applicant requests that the patent term adjustment be corrected to a total of 43 days. The basis for this correction is 37 CFR 1.704. Applicant contends that the patent term should be adjusted because applicant timely filed the responses to the Notice to File Missing Parts (first non-compliant notice on sequence listings) mailed on May 23, 2001 and two Notices to Comply with Requirements for Patent Applications containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures mailed on October 22, 2001 (second non-compliant notice on sequence listing) and on October 1, 2002 (third non-compliant notice on sequence listing).

Applicant contends that since a proper response was timely filed within three months of each non-compliant notice, the 446 days charged as applicant delay from the mailing of the first Notice of Missing Parts dated May 23, 2001 until the third response by applicant dated November 13, 2002<sup>1</sup> is in error. Applicant contends that the actual delay should be a total of 43 days as a result of a delay of 8 days in replying to the first sequence listing notice and a delay of 35 days from the filing of an Information Disclosure statement after a response under §1.704(c)(8).

Applicant also states that the 3 year delay under 37 CFR 1.703(b) should be 252 days (from March 19, 2004 to November 29, 2004 RCE filing).

Applicant also states that the patent issuing from the application is not subject to a terminal disclaimer

#### **Relevant statutes and regulations**

37 CFR § 1.704(c)(7) provides that:

Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the

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<sup>1</sup> The actual PTO stamped receipt date is November 13, 2002 instead of November 12, 2002 as indicated on the petition and other PTO records. Hereinafter the correct date of November 13, 2002 will be used as the receipt date of the response to the Notice mailed on October 1, 2002.

reply or other paper correcting the omission was filed;

37 CFR § 1.704(c)(8) provides that:

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

#### OPINION

Applicant's arguments and evidence have been considered, and in light of the application history, it has been determined that the initial period of adjustment is correct.

While applicant argues that compliant responses were timely filed to each of the three notices, the first and second responses dated July 26, 2001 and January 30, 2002 were not acceptable necessitating non-compliant communications regarding the same sequence listing requirement to applicant on October 22, 2001 and October 1, 2002, respectively. 37 CFR §1.704(c)(7) states that the period of adjustment begins on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. Since the first sequence listing filed on July 26, 2001 was filed having an omission and a complete and proper sequence listing was not received until November 13, 2002, four hundred and seventy-five (475) later, a delay of 475 days is correct.

A review of the file record reveals that the receipt date of the acceptable sequence listing response was incorrect in PALM and the PTA calculations. The actual postcard receipt date for the sequence listing is November 13, 2002 (instead of November 12, 2002). Accordingly, the applicant delay has been corrected to 475 days (instead of the previous 446 days.)

In response to applicant's comment regarding his calculations for the three-year date under §1.703(b) as being a total of 252 days. It is noted that applicant's date ranges are correct, but the calculation is in error. The actual number of days for the three-year delay from March 19, 2001 (filing date of the

application) to November 29, 2004 (filing of the RCE) is 255 days (instead of 252).

### Conclusion


In view thereof, adjustments to the initial patent term calculations for USPTO delay as requested by applicant is not warranted and the petition is dismissed.

The USPTO delay is correct at 380 days and applicant delay has been adjusted to 510 days for a patent term adjustment of zero (0) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment shown on the patent (and in the Issue Notification mailed approximately three weeks prior to issuance) will include any additional patent term accrued pursuant to sections 1.702(a)(4) and 1.703(b).

Telephone inquiries specific to this matter should be directed to Amelia Au at 571.272.7414.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of Revised PAIR Screen

Day : Wednesday

**PALM INTRANET**

Date: 6/7/2006

Time: 17:52:36

**PTA Calculations for Application: 09/813279**

Application Filing Date:	03/19/2001	PTO Delay (PTO):	380
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	481
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-29		

**File Contents History**

Number	Date	Contents Description	PTO	APPL	START
64	06/07/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		475	
63	06/07/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	446		
55	01/10/2005	MAIL NOTICE OF ALLOWANCE			
54	01/07/2005	ISSUE REVISION COMPLETED			
53	01/07/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
52	01/07/2005	NOTICE OF ALLOWABILITY			
51	11/29/2004	WORKFLOW - REQUEST FOR RCE - FINISH			
50	12/08/2004	DATE FORWARDED TO EXAMINER			
49	11/29/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)			
48	12/08/2004	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
47	11/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	11/29/2004	WORKFLOW INCOMING AMENDMENT IFW			
45	11/29/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
44	11/30/2004	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
43	11/29/2004	PETITION ENTERED			
42	11/29/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
41	06/14/2004	MISCELLANEOUS INCOMING LETTER			
40	10/06/2004	RECEIPT INTO PUBS			
39	07/26/2004	ISSUE FEE PAYMENT RECEIVED			
38	06/14/2004	WORKFLOW INCOMING PETITION IFW			
37	05/26/2004	SEQUENCE FORWARDED TO PUBS ON TAPE			
36	05/24/2004	RECEIPT INTO PUBS			

35	05/20/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
34	05/04/2004	MAIL NOTICE OF ALLOWANCE			
33	05/03/2004	ISSUE REVISION COMPLETED			
32	05/03/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
31	05/03/2004	NOTICE OF ALLOWABILITY			
30	02/17/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
29	02/24/2004	DATE FORWARDED TO EXAMINER			
28	02/17/2004	RESPONSE AFTER NON-FINAL ACTION			
27	11/28/2003	MAIL NON-FINAL REJECTION			
26	11/17/2003	NON-FINAL REJECTION			
25	09/29/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		35	23
24	09/03/2003	DATE FORWARDED TO EXAMINER			
23	08/25/2003	RESPONSE AFTER NON-FINAL ACTION			
22	06/03/2003	MAIL NON-FINAL REJECTION	380		-1
21	06/02/2003	NON-FINAL REJECTION			
20	04/17/2003	CASE DOCKETED TO EXAMINER IN GAU			
19	03/03/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	02/27/2003	CASE DOCKETED TO EXAMINER IN GAU			
17	12/12/2002	APPLICATION DISPATCHED FROM OIPE			
16	12/11/2002	APPLICATION IS NOW COMPLETE			
13	11/12/2002	ADDITIONAL APPLICATION FILING FEES		446	4
12	11/12/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
11	12/09/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
10	10/01/2002	SEQUENCE ERRORS			
9	01/30/2002	ADDITIONAL APPLICATION FILING FEES			
8	01/30/2002	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
7	03/08/2002	CRF DOES NOT MATCH APPLICATION SPECIFICATION -- APPLICANT MUST CORRECT			
6	10/22/2001	SEQUENCE ERRORS			
5	09/12/2001	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
4	05/23/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			

3	05/23/2001	CORRESPONDENCE ADDRESS CHANGE			
2	04/04/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/19/2001	INITIAL EXAM TEAM NN			

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**EXPLANATION OF PTA CALCULATION**

**EXPLANATION OF PTE CALCULATION**

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